



Atty. Dkt. No. 1423-9

Ser. No. 09/428,508

appropriate to correct the type. Applicant appreciates the Examiner's kindness in pointing out the typo.

The drawings are corrected by a separate paper.

Claim 23 was corrected in the Preliminary Amendment to depend from only claim 45.

dency has now been changed to start of dependency has now been changed to claim 1.

The expression "and/or" has been changed to "or" or to "and" as may be appropriate. It is thought that, after the patent issues, a judge would construe the claims under the Doctrine of Equivalent in the same manner that he would construe them if this Amendment had not been made.

Claims Rejections under USC § 102

As will be appreciated from an inspection of the German Bock patent (especially Figure 5), the central axis of each tire in Bock is aligned with the vertical and is not inclined. Hence Bock is irrelevant to claim 1, 3, 4, 5, 6 and 7.

The Examiner's view is that claims 25, 29, 30, 31 and 34 are anticipated by Bock. In particular, as can be gleaned from the verified translation, Bock does not disclose anything regarding the formation of a base or a retaining wall, which is an essential feature of applicants' invention, in general, and specifically in independent claim 25.

Independent claim 15, and its dependent claims disclose a reinforcing section of the retaining wall which is formed by lengths of tire tread or conveyor belt. On a closer inspection of Bock Figure 4, the connection of the tires employs wires or bracing made from steel. This does not





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in anyway resemble a reinforcing section made from the lengths of tire tread or conveyor belt. The same argument also applies to independent claim 40 and its dependent claims.

Claims Rejections under USC § 103

The Examiner is arguing that a construction of a retaining wall having this inclined configuration would have been obvious in the art. Bock does not disclose a retaining wall in which the central axis of each tire is inclined in both the vertical and horizontal directions. Moreover, the Examiner has not provided any evidence or factual reason for drawing his conclusion of obviousness. If it had been so obvious, why, in a relatively mature art, has no one used to this technique? Hence, in the absence of evidence of obviousness, applicant calls for the affidavit under 37 CFR 1.104(d)(2).

Off-setting one course with respect to the next and overlying course has been employed both with concrete and stone walls and also with tires (see e.g. US 4,080,793). However, the inventors have developed a technique for working and preparing the ground in front of an embankment in a manner such that tires can then be placed thereon in courses with their <u>central axis inclined</u>, which results in a stable retaining wall. Hence, in the absence of any evidence in the art or affidavit of personal knowledge, the application should be allowed.

It is noted that page 6, Paper No. 5 lists claims 8-14, 18-20, 33, 36, 43 and 47 as being allowable after certain amendments are made. Applicants have made as many of the amendments as can be made without introducing new independent claims. Needlessly introducing new



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independent claims would only enhance costs for both applicant and the U.S. taxpayer who has to pay the cost of excessive printing. It is thought that these and other claims will now be allowed. If these claims are not allowed, applicants reserve the right to submit the allowable claims in an independent form, as may then be necessary.

Claim 1 is allowable since a central axis of each tire is inclined to the vertical. Claim 2 adds the batter angle of 10°-20°. Claim 15 requires a reinforcing section formed by parts cut from tires. Claim 25 calls for a base for the retaining wall. Claim 36 describes how an uncut portion of a tire acts as a hinge. The remainder of the claims depend on and add further limitations to one of these independent claims.

For the foregoing reasons it is thought that the application is in condition for allowance. If the Examiner should find any reason for not allowing the application, he is respectfully requested to telephone the undersigned attorney. Any reasonably necessary amendments will be made promptly.

Reconsideration and allowance are requested.

Dated: 3/16/0/

Respectfully submitted

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of F barcelonnette, dim. of berketlike bed (as of wickerwork or end 2: a perambulator that

on who plays an acoustic or elec-

bas-si \'bas-,ē\ [It, fr. ML bassus, inger; esp: an operatic bass It bassone, fr. basso] (ca. 1727): a having a long U-shaped conical by a thin metal tube and a usual of the oboe — bas-soon-ist \-'sii-

lo, bas-, -'fun-\ n, pl basso profunio, joas-, - tun-\ n. pt dasso ptoun-p heavy bass voice with an excep-ving this voice \,bas-(\)ō-ri-'lē-(\)vō, \,bäs-(\)ō-rēl-low + riliew relief] (1666): BAs-

A 2: DOUBLE BASS iny of several New World lindens; ned white wood of a basswood to OHG & ON bass (bef. 12c) 1

(13c) 1: an illegitimate child 2 jular, inferior, or of questionable ceable person — used as a general—bas-tard-ly adj

TE 2: of inferior breed or stock or irregular size 4: of a kind simihan some standard (~ measles) 5

izoing (ca. 1611) 1: to declare or the from a higher to a lower state or ion \bas-tard-a-'zā-shan\ n

es (15c) 1: the quality or state of 2: the begetting of an illegitimate

ME basten, fr. MF bastir, of Gmc h, OE bast bast] (15c): to sew with something in place temporarily —

inown1 (15c): to moisten (as meat) I butter, fat, or pan drippings) esp.

ON beysta; akin to OE beatan to or soundly : THRASH 2 : to scold

oody fiber obtained chiefly from the ordage, matting, and fabrics

the Bastille, fortress in Paris used

rved in France as a national holiday Bastille in 1789
äd-\ or bas-ti-nade \bastonada, fr. baston stick, fr. LL a stick or cudgel 2 a: a beating at consisting of beating the soles of

to subject to repeated blows action of a sewer who bastes 2 a estitching made by basting one that bastes food 2: the liquid

ille fortress, modif. of OProv bastida, akin to OHG besten to patch] (1562) tion 2: a fortified area or position stronghold: BULWARK—bastioned

or Resutes (1835); one of the Bantu

rob. of Celt origin; akin to Gaulish
BATTLE] (bef. 12c) 1: a stout solid
TROKE 3 a: a wooden implement
games b: a paddle used in various
short whip used by a jockey 4
— usu. used in the phrase at bat 5
AIT 7: BINGE — off one's own bat
if the bat: without delay: IMMEDI-

: to strike or hit with or as if with a inner) by batting b: to have a batength: consider in detail ~ vi 1 a b: to take one's turn at bat 2: to

of Scand origin; akin to OSw natt-r (Chiroptera) of nocturnal placental adified to form wings er of ²bate] (1838): to wink esp. in

by employed to look after the equip-

to OE bacan to bake] (15c) 1: the GNO 2 a: the quantity of material ation; specif: a mixture of raw material the quantity produced at one operation on a computer at one time with the : a group of persons or things: Lot ther or process as a batch — batcher

bate 'bāt' vb bated; bating [ME baten, short for abaten to abate] vi (14c) 1: to reduce the force or intensity of: RESTRAIN (with bated breath) 2: to take away: DEDUCT 3 archaic: to lower esp. in amount or estimation 4 archaic: BLUNT ~ vi, obs: DIMINISH, DE-

bath chair \ bath \ bathed; bath-ing [ME bathen, fr. OE bathian; akin to OE bath bath] v (bef. 12c). 1: to wash in a liquid (as water) 2: MOISTEN WET 3: to apply water or a liquid medicament to 4: to flow along the edge of: LAVE 5: to suffuse with or as if with light \(\sim vi \) 1: to take a bath 2: to go swimming 3: to become immersed or absorbed — bather \ bat

bathing beauty n (1920): a woman in a bathing suit who is a contestant in a beauty contest bathing suit n (1873): SWIMSUIT bath mat n (1895): a usu, washable mat used in a bathroom batho-lith \'bath-2-\lith\'n [ISV] (1903): a great mass of intruded igneous rock that for the most part stopped in its rise a considerable distance below the surface — batho-lith-ic \bath-2-lith-ik\ adj bathom-e-ter \b2-'thäm-2-r\ n (1875): an instrument for measuring depths in water

k(o-)lē\ adv
bathy-pe-lag-ic \bath-i-pə-laj-ik\ adj [bathy- + pelagic] (ca. 1909): of, relating to, or living in the ocean depths esp. between 2000 and 12,000 (cc. (600 and 3600 meters))
bathy-scaphe \bath-i-skaf, -skaf\ also bathy-scaph \-skaf\ n [ISV bathy- + Gk skaphe light boat] (1947): a navigable submersible ship for deep-sea exploration having a spherical watertight cabin attached bathy-sphere (600) a cato-aliv built steel diving sphere for

tor deep-sea exploration having a spherical waterlight cabin attached to its underside bathy-sphere \\,sfi(a)r\ n (1930): a strongly built steel diving sphere for deep-sea observation bathy-sphere \\,sfi(a)r\ n (1930): a strongly built steel diving sphere for deep-sea observation bathy-ther-mo-graph \\^tthar-mo-graph \\^tthar-mo-graph \\ n (1938): an instrument designed to record water temperature as a function of depth ba-tik\ ba-'tek\ ba-'tek\ n [Malay] (1880): 1 a: an Indonesian method of hand-printing textiles by coating with wax the parts not to be dyed b: a design so executed 2: a fabric printed by batik bating \\ brightar-mo-printed \\ bating \\ bati

which a leader directs a band or orchestra 5: a hollow cylinder carried by each member of a relay team and passed to the succeeding runner 6: a hollow metal rod with a weighted bulb at one or both ends that is flourished or twirled by a drum major or drum majorette bat out or (1941): to compose esp. in a casual, careless, or hurried manner.

Bastra-chi-an \bo-'trā-kē-ən\ n [deriv. of Gk batrachos frog] (ca. 1828) : FROG. TOAD, SALIENTIAN; broadly: a vertebrate amphibian — batra-

188-tra-Chi-san (DS-118-kc-sin) n (1817). Of Shadhala (1818) 1-18-kc-sin adj (1919): BATTY 2 bats-man \bats\man \n (1756): a batter esp. in cricket batt \bats\ adj (1919): BATTY 2 bats-man \bats\man \n (1756): a batter esp. in cricket batt \bats\ n (1871): BATTING 2: also: an olten square piece of batting bat-tal-lon \bats\ n-(1871): BATTING 2: also: an olten square piece of batting bat-tal-lon \bats\ n-(1871): BATTING 2: also: an olten square piece of batting bat-tal-lon \bats\ n-(1871): also \frac{1}{18} battallos \frac{1}{18} bat-tal-los \bats\ n-(1871): also \frac{1}{18} battallon \frac

is extended in any direction usu. Ionower by a bear against the porting foot
batten \bat-in\ vb bat-ened; bat-ten-ing \bat-inin -\n-in\ [prob. fr.
ON batna to improve; akin to OE betera better] vi (1591) 1 a: to
grow fat b: to feed gluttonously 2: to grow prosperous esp, at the
expense of another \sim vi: FATTEN
batten n [F baton] (1658) 1 a Brit: a piece of lumber used esp, for
flooring b: a thin narrow strip of lumber used esp, to seal or reinforce a joint 2: a strip, bar, or support resembling or used similarly
to a batten

force a joint 2: a strip, bar, or support resembling or used similarly to a battern batterned; bat-ten-ding \bat-nin, \bat-nin\ (1663): to furnish or fasten with batterns — often used with down batter \bat-or \vb [ME batern, prob. freq. of batten to bat, fr. bat] w (14c) 1 a: to beat with successive blows so as to bruise, shatter, or demolish b: BOMBARD. 2: to subject to strong, overwhelming, or repeated attack 3: to wear or damage by hard usage or blows (a \infty and old hat) \sim v: to strike heavily and repeatedly: BEAT \(\mathref{sym} \) see MAIM batter, \(\mathref{fig:sym} \) for \(\mathref{batter} \) n [ME \(\mathref{bater}, \mathref{prob.} \) fr. \(\mathref{bater} \) hatter \(\mathref{fig:sym} \) flour, egg, and milk or water and being thin enough to pour or drop from a spoon 2: an instance of battering \(\mathref{bater} \) hatter \(\mathref{fig:sym} \) (1743): a receding upward slope of the outer face of a structure

itter vt [origin unknown] (ca. 1909): to give a receding upward slope

To (as a wall)

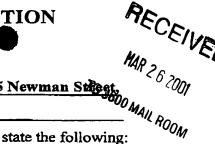
Statter n (1773): one that bats; esp: the player whose turn it is to bat batterie \(\bata \to -\frac{1}{17} \lambda \text{n [F, lit., beating } - \text{more at BATTERY] (1712): a ballet movement consisting of beating together the feet or calves of the

batte-rie \bat-e-rie\ n [F, lit., beating — more at BATTERY] (1712): a ballet movement consisting of beating together the feet or calves of the legs during a leap battering ram n (1611) 1: a military siege engine consisting of a large wooden beam with a head of iron used in ancient times to beat down the walls of a besieged place 2: a heavy metal bar with handles used (as by firemen) to batter down doors and walls bat-tery \bat-e-re, \bat-tre\cdot n. pl-ter-les [MF batterie, fr. OF, fr. battre to beat, fr. L battuere — more at BATTLE] (1531) 1 a: the act of battering or beating b: the unlawful beating or use of force on a person without his consent — compare ASSAULT 2a 2 a: a grouping of artillery pieces for tactical purposes b: the guns of a warship 3: an artillery unit in the army equivalent to a company 4 a: a combination of apparatus for producing a single electrical effect b: a group of two or more cells connected together to furnish electric current; doe: a single cell that furnishes electric current (a flashlight ~) 5 a: a number of similar articles, items, or devices arranged, connected, or used together: SET, SERIES (a ~ of tests) b: an impressive or imposing group: ARRAY 6: the position of readiness of a gun for firing 7: the pitcher and catcher of a baseball team bat-ting \bar batting \

batting average n (1867) 1: a ratio (as a rate per thousand) of base hits to official times at bat for a baseball player 2: a record of achievement or accomplishment "bat-tle \bar 1, n. often attrib [ME batel, fr. OF bataille battle, fortifying tower, battalion, fr. LL battalia combat, alter, of battualia fencing exercises, fr. L battuere to beat, of Celt origin; akin to Gaulish andabata, a gladiator; akin to L fatuus foolish, Russ bat cudgel] (13c) 1: a general encounter between armies, ships of war, or airplanes 2: a combat between two persons 3 archaic: BATTALION 4: an extended contest, struggle, or controversy battle vb bat-fled; bat-fling \bar bat-lin, -?-in\bar vi (14c) 1: to engage in battle: FIGHT 2: to contend with full strength, vigor, craft, or resources: STRUGGLE \sim vi : to fight against 2: to force (as one's way) by battling \sim bat-fling [ME batailen, fr. MF batailleir to fortify, fr. OF, fr. bataille] archaic (14c): to fortify with battlements bat-fle-ax \bar bat-?-aks\ n (14c) 1: a broadax formerly used as a weapon of war 2: a quarrelsome dominering woman battle cruiser m (1911): a large heavily armed warship that is lighter, faster, and more maneuverable than a battle-fa-figued adj

\a\ abut \a\ kitten, F table \ar\ further \a\ ash \a\ ace \a\ cot. cart \au\ out \ch\ chin \e\ bet \E\ easy \g\ go \i\ hit \l\ ice \i\ Job \n\sing \o\ go \o\ law \oi\ boy \th\ thin \th\ the \ii\ loot \u\\ foot \y\ yet \zh\ vision \a, k, ", oc; &, uc, E, "\ see Guide to Pronunciation

VERIFICATION OF TRANSLATION I, (name & address of translator) Dr. Andreas J. Hartmann of 45 Newman Street, 2000 MAIL ROOM



I am fluent in both the English and German languages and capable of translating documents from one into the other of these languages.

The attached document is a true and accurate English translation to the best of my knowledge and belief of: German document DE 85 13 539 by Manfred Bock

Date:







Description

RECEIVED

This invention is based on retaining wall for a mound on which plants can be TO 3600 MAIL ROOM and which can be used for noise protection.

Noise protection walls are known in different designs.

The construction of noise protection walls, on which plants can be planted, is costly if preformed concrete parts are being used. This invention is based on the usage of a waste product of our society, which has a problematic disposal, for the design of a noise protection wall.

It is an object of the invention that a spherical body of rubber, eg. a tyre, has been cut off in the area of the measurement strip of one side of the tyre, has been shaped like a basin and has an opening (3) in the centre of the ground-plate (2) and some openings in the tread segment (1).

The plant containers are interconnected using wire or bracings made form non-rusting steel and from a lattice which is filled up with soil layer-by-layer.

Segments for hanging plants are formed at the ends of the layers.

For higher noise protection walls, with the height being above a certain limit, chains with links made from flat pieces of steel are used to connect the plant containers.

Within a short period of time the roots of the plants will grow through the lattice described above which will result in additional stability, and the visible rubber side of the construction will be grown over. This will result in a noise protection wall that fits in harmonically into the landscape.

- Fig. 1: Cross section through spherical body made from rubber, with tread segment (1), ground plate (2) with spherical hole (3) and openings for connectors (4).
- Fig. 2: A-a horizontal cross section.
- Fig. 3: Perspective view of above.
- Fig.4: Example of two parallel chains of tyres connect with belts.
- Fig. 5: Vertical view of a range of tyre layers which positioned in a displaced manner.
- Fig. 6: Diagonal view of a tyre wall with segment-like plant containers.